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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON
14

15 TRAVELERS PROPERTY
16 CASUALTY COMPANY OF
17 AMERICA, a foreign insurance
18 company; THE TRAVELERS
19 INDEMNITY COMPANY, a foreign
20 insurance company; THE CHARTER
21 OAK FIRE INSURANCE
22 COMPANY, a foreign insurance
23 company; ST. PAUL GUARDIAN
INSURANCE COMPANY, a foreign
insurance company; and FIDELITY
AND GUARANTY INSURANCE
COMPANY, a foreign insurance
company,

Plaintiffs,

v.

21 COLUMBIA ASPHALT &
22 GRAVEL, INC., a Washington
23 company; COLUMBIA READY-
MIX, INC. , a Washington company;
LSL PROPERTIES, LLC, a
Washington limited liability

No.

**COMPLAINT FOR
DECLARATORY RELIEF**

company; LAWRENCE SALI, an individual; STEVEN SALI, an individual; DELETA SALI, an individual; GAYLE SALI, an individual, and INTERSTATE CONCRETE AND ASPHALT COMPANY, a foreign company,

Defendants.

COMES NOW, Plaintiffs Travelers Property Casualty Company of America, The Travelers Indemnity Company, the Charter Oak Fire Insurance Company, St. Paul Guardian Insurance Company, and Fidelity and Guaranty Insurance Company (collectively, “Travelers”) submit the following Complaint for Declaratory Relief against Defendants Columbia Asphalt & Gravel, Inc., Columbia Ready-Mix, Inc., Lawrence Sali, Steven Sali, Deleta Sali, Gayle Sali, LSL Properties, LLC, and Interstate Concrete and Asphalt Company.

I. PARTIES

1.1 Travelers Property Casualty Company of America (“TPCCA”) is an insurance company organized under the laws of the State of Connecticut with its principal place of business located in the State of Connecticut.

1.2 The Travelers Indemnity Company (“TIC”) is an insurance company organized under the laws of the State of Connecticut with its principal place of business located in the State of Connecticut.

1.3 The Charter Oak Fire Insurance Company (“COFIC”) is an insurance

1 company organized under the laws of the State of Connecticut with its principal
2 place of business located in the State of Connecticut.

3 1.4 St. Paul Guardian Insurance Company (“St. Paul”) is an insurance
4 company organized under the laws of the State of Connecticut with its principal
5 place of business located in the State of Connecticut.
6

7 1.5 Fidelity and Guaranty Insurance Company (“FGIC”) is an insurance
8 company organized under the laws of the State of Iowa with its principal place of
9 business located in the State of Connecticut.

10 1.6 Columbia Asphalt & Gravel, Inc. (“CAG”) is a Washington
11 Corporation with its principal place of business located in the State of Washington.
12

13 1.7 Columbia Ready-Mix, Inc. (“CRM”) is a Washington Corporation
14 with its principal place of business located in the State of Washington.

15 1.8 LSL Properties, LLC (“LSL”) is a Washington limited liability
16 company. On information and belief, all of LSL’s members are citizens of the State
17 of Washington.

18 1.9 On information and belief, Lawrence Sali, Steven Sali, Deleta Sali, and
19 Gayle Sali (collectively, the “Sali Defendants”) are natural persons and members of
20 the same family. Upon information and belief, the Sali Defendants are residents
21 and citizens of the State of Washington or the State of Arizona. It has been alleged
22 that some or all of the Sali Defendants own and/or manage CAG, CRM, and/or
23

1 LSL.

2 1.10 On information and belief, Interstate Concrete and Asphalt Company
3 (“Interstate”) is an Idaho Corporation with its principal place of business located in
4 the State of Idaho.
5

6 **II. JURISDICTION AND VENUE**

7 2.1 Jurisdiction is properly before this Court pursuant to 28 U.S.C. §1332
8 as complete diversity exists among the parties and the amount in controversy
9 exceeds \$75,000.

10 2.2 The Court has jurisdiction over this declaratory judgment action
11 pursuant to 28 U.S.C. § 2201 because there is an actual and justiciable controversy
12 between the parties with respect to the existence of insurance coverage under the
13 policies of insurance issued by Travelers. A judicial determination and declaration
14 of the rights and obligations of the parties is necessary and appropriate at this time
15 because Travelers has no adequate remedy at law which will resolve the current
16 controversy.
17

18 2.3 Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
19 this action involves a dispute over the application of insurance coverage under
20 policies written in Yakima County, Washington, the alleged events and omissions
21 which gave rise to this claim occurred Yakima County, Washington, and because
22 Defendants are subject to this Court’s jurisdiction.
23

III. FACTUAL BACKGROUND

3.1 This case arises from commercial general liability and commercial umbrella policies of insurance issued by Travelers to CAG, CRM, and LSL and the Claims asserted in the Underlying Arbitration¹.

A. Ownership and Mining Operations of the Quarry

3.2 The Anderson Quarry located near Yakima, WA, is a gravel quarry that has been used for mining operations since the 1970s (the “Quarry”). The Quarry is in an area commonly referred to as “Rattlesnake Ridge”. Portions of Rattlesnake Ridge that are unrelated to the Quarry are owned by the Confederated Tribes and Bands of the Yakama Nation (the “Yakama Nation”).

3.3 From 1998 to 2017, Columbia operated a mine at the Quarry. It appears that CAG and/or CRM rented and/or leased the Quarry from LSL.

3.4 In February of 2017, an Asset Purchase Agreement was executed between CAG and CRM and Interstate for assets relating to the mining operation at the Quarry.

3.5 Also in February of 2017, Interstate leased the Quarry from LSL.

3.6 Thereafter, Interstate overtook the Quarry’s reclamation bond held with the Department of Natural Resources (“DNR”). The reclamation bond gave

¹ *Interstate Concrete and Asphalt Company v. Columbia Asphalt and Gravel, Inc., et al.*, American Arbitration Association Case No. 01-20-0000-5105.

1 Interstate permission to continue to mine the Quarry.

2 **B. The Ground Crack**

3 3.7 On October 2, 2017, the pilot of a small aircraft flying over the area
4 near the Quarry observed a ground crack up the slope and north of the Quarry. The
5 ground crack is located on land owned by the Yakama Nation.
6

7 3.8 The ground crack is not located on the ground owned or leased by
8 Interstate.

9 3.9 DNR was notified the following day, October 3, 2017.

10 3.10 Subsequently, all mining operations in the area surrounding the ground
11 crack, including the Quarry, were halted.
12

13 3.11 It is unknown when the ground crack first appeared, or if another party
14 observed the ground crack prior to October 2, 2017.

15 3.12 Cornforth Consultants (“Cornforth”) was retained by CAG and CRM
16 to conduct a geotechnical assessment of the ground crack and its effect regarding
17 landslide mechanisms and potential impacts on quarry operations. Cornforth
18 determined that the cracked portion of Rattlesnake Ridge was the result of a slow-
19 moving landslide. Cornforth also found that activities associated with mining the
20 Quarry presented a minimal risk to worsen the ground stability.
21

22 3.13 DNR approximates the landslide to be 20 acres in size. The landslide
23 is moving south at .7 feet per week.

1 3.14 Subsequently, Interstate petitioned DNR to permit it to resume mining
2 operations at the Quarry. DNR granted permission on a limited basis, allowing
3 mining only on the Quarry's east wall away from the ground crack.

4 3.15 Upon information and belief, Interstate continues to mine the Quarry
5 per the permission granted by DNR to date.

6 3.16 Upon information and belief, the land movement at Rattlesnake Ridge
7 has not caused any impact to the land where the Quarry is located.

8
9 **C. The Underlying Arbitration**

10 3.17 On February 12, 2020, Interstate filed a Demand for Arbitration with
11 the American Arbitration Association alleging various claims against Columbia and
12 LSL (hereinafter collectively referred to as "Respondents"). The Arbitration
13 Demand involves claims arising from the February 2020 Asset Purchase Agreement
14 and the Lease Agreement between the parties. The Arbitration Demand alleges as
15 follows:
16

17 3.9 Over the course of negotiating and executing the Asset
18 Purchase Agreement and related documents, Respondents
19 failed to disclose—and, upon information and belief,
20 purposefully withheld from Claimant—information
21 regarding significant geological conditions and
22 deficiencies impacting the Quarry, which were relevant to
23 the purchase of assets, including fissures/cracks near
Rattlesnake Ridge.

3.10 This information regarding geological deficiencies
was material to the Asset Purchase Agreement and the

1 continued operation of business.

2 3.11 Respondents were aware of significant geological
3 conditions and deficiencies in the subject property or
4 properties, including cracks/fissures in the Rattlesnake
5 Hills, for years prior to execution of the Asset Purchase
6 Agreement.

7 3.12 Upon information and belief, Respondents attempted
8 to hide the cracks/fissures in the Rattlesnake Hills prior to
9 execution of the Asset Purchase Agreement, including by
10 filling said cracks and fissures with earth materials.

11 3.13 Despite knowledge of these significant geological
12 conditions and deficiencies, Respondents negligent or
13 willfully failed to inform Claimant of this material
14 information, and instead covered them up so Claimant
15 would not be aware and so the Asset Purchase Agreement
16 and lease would be executed.

17 [...]

18 3.16 As a result of the instability at Rattlesnake Ridge,
19 Claimant has incurred significant expense and costs as a
20 result of this event and may incur significant expense and
21 cost in the future.

22 3.18 Interstate asserts claims for fraud, negligent misrepresentation, breach
23 of contract, contractual liability, and rescission against Respondents. Interstate's
alleged damages include financial losses, loss of business goodwill, past and future
costs and expenses, attorneys fees, litigation costs, and remediation costs.

24 **D. Travelers' Investigation and Claims Handling**

25 3.19 After receiving notice of the subject landslide and the Underlying
Arbitration, Travelers promptly opened a claim and initiated a coverage

investigation.

3.20 As a matter of good faith, Travelers agreed to defend CAG, CRM, the Sali Defendants, and LSL in the Underlying Arbitration subject to an express reservation of rights.

3.21 To date, Travelers has not received any information showing that any property owned or leased by Interstate has been damaged due to the Rattlesnake Ridge land slide.

IV. POLICIES OF INSURANCE

A. Identification of the 09-14 Commercial General Liability Policies

4.1 Travelers issued multiple commercial general liability policies to CAG, CRM, and LSL which were in effect from April 26, 2009 through November 1, 2014. These policies provided commercial general liability coverage under the terms and conditions set forth therein. The policy numbers and policy periods are set forth below:

Policy Number	Insuring Entity	Policy Period	Hereinafter Referred to As:
DT-CO-2442M85A-IND-09	TIC	04/26/09-04/26/10	09-10 Policy
DT-CO-2442M85A-IND-10	TIC	04/26/10-04/26/11	10-11 Policy
DT-CO-2442M85A-COF-11	COFIC	04/26/11-04/26/12	11-12 Policy
DT-CO-2442M85A-COF-12	COFIC	04/26/12-04/26/13	12-13 Policy

DT-CO-2442M85A-IND-13	TIC	04/26/13-04/26/14	13-14 Policy
DT-CO-2442M85A-IND-14	TIC	04/26/14-11/01/14	14-14 Policy

These policies are hereinafter referred to as the “09-14 Policies”.

4.2 The 09-14 Policies provide commercial general liability coverage with limits up to \$1,000,000 each occurrence and \$2,000,000 general aggregate.

B. Provisions of the 09-14 Policies

4.3 The 09-14 Policies contain the following provisions regarding who is an insured:

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or

1 directors. Your stockholders are also
2 insureds, but only with respect to their
3 liability as stockholders.

4 CG 00 01 10 01

5 4.4 The 09-14 Policies contain the following insuring
6 agreement for Bodily Injury and Property Damage liability ("Coverage
7 A"):

8 **SECTION I – COVERAGES**

9 **COVERAGE A BODILY INJURY AND PROPERTY**
10 **DAMAGE LIABILITY**

11 **1. Insuring Agreement**

12 **a.** We will pay those sums that the insured becomes legally
13 obligated to pay as damages because of "bodily injury"
14 or "property damage" to which this insurance applies.
15 We will have the right and duty to defend the insured
16 against any "suit" seeking those damages. However, we
17 will have no duty to defend the insured against any
18 "suit" seeking damages for "bodily injury" or "property
19 damage" to which this insurance does not apply. We
20 may, at our discretion, investigate any "occurrence" and
21 settle any claim or "suit" that may result. But:

19 **(1)** The amount we will pay for damages is limited as
20 described in Section **III** – Limits Of Insurance; and

21 **(2)** Our right and duty to defend ends when we have
22 used up the applicable limit of insurance in the
23 payment of judgments or settlements under
Coverages **A** or **B** or medical expenses under
Coverage **C**.

1 No other obligation or liability to pay sums or perform acts
2 or services is covered unless explicitly provided for under
3 Supplementary Payments – Coverages **A** and **B**.

4 **b.** This insurance applies to "bodily injury" and "property
5 damage" only if:

6 (1) The "bodily injury" or "property damage" is caused
7 by an "occurrence" that takes place in the "coverage
8 territory";

9 (2) The "bodily injury" or "property damage" occurs
10 during the policy period; and

11 (3) Prior to the policy period, no insured listed under
12 Paragraph **1.** of Section **II** – Who Is An Insured and
13 no "employee" authorized by you to give or receive
14 notice of an "occurrence" or claim, knew that the
15 "bodily injury" or "property damage" had occurred,
16 in whole or in part. If such a listed insured or
17 authorized "employee" knew, prior to the policy
18 period, that the "bodily injury" or "property
19 damage" occurred, then any continuation, change or
20 resumption of such "bodily injury" or "property
21 damage" during or after the policy period will be
22 deemed to have been known prior to the policy
23 period.

c. "Bodily injury" or "property damage" which occurs
during the policy period and was not, prior to the policy
period, known to have occurred by any insured listed
under Paragraph **1.** of Section **II** – Who Is An Insured
or any "employee" authorized by you to give or receive
notice of an "occurrence" or claim, includes any
continuation, change or resumption of that "bodily
injury" or "property damage" after the end of the policy
period.

d. "Bodily injury" or "property damage" will be deemed

1 to have been known to have occurred at the earliest
2 time when any insured listed under Paragraph 1. of
3 Section II – Who Is An Insured or any "employee"
4 authorized by you to give or receive notice of an
5 "occurrence" or claim:

6 (1) Reports all, or any part, of the "bodily injury" or
7 "property damage" to us or any other insurer;

8 (2) Receives a written or verbal demand or claim for
9 damages because of the "bodily injury" or "property
10 damage"; or

11 (3) Becomes aware by any other means that "bodily
12 injury" or "property damage" has occurred or has
13 begun to occur.

14 [...]

15 CG 00 01 10 01

16 4.5 The 09-14 Policies contain the following Coverage A Exclusions:

17 **2. Exclusions**

18 This insurance does not apply to:

19 **a. Expected Or Intended Injury**

20 "Bodily injury" or "property damage" expected or
21 intended from the standpoint of the insured. [...]

22 [...]

23 **j. Damage To Property**

"Property damage" to:

(1) Property you own, rent, or occupy, including
any costs or expenses incurred by you, or any
other person, organization or entity, for
repair, replacement, enhancement,

1 restoration or maintenance of such property
2 for any reason, including prevention of injury
3 to a person or damage to another's property;

4 (2) Premises you sell, give away or abandon, if
5 the "property damage" arises out of any part
6 of those premises;

7 (3) Property loaned to you;

8 (4) Personal property in your care, custody or
9 control of the insured;

10 (5) That particular part of real property on which
11 you or any contractors or subcontractors
12 working directly or indirectly on your behalf
13 are performing operations, if the "property
14 damage" arises out of those operations; or

15 (6) That particular part of any property that must
16 be restored, repaired or replaced because
17 "your work" was incorrectly performed on it.

18 Paragraphs (1), (3) and (4) of this exclusion do not
19 apply to "property damage" (other than damage by
20 fire) to premises, including contents of such
21 premises, rented to you for a period of 7 days or
22 fewer consecutive days. A separate limit of
23 insurance applies to Damage To Premises Rented to
You as described in Section III – Limits Of
Insurance.

Paragraph (2) of this exclusion does not apply if the
premises are "your work" and were never occupied,
rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do
not apply to liability assumed under a sidetrack
agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

[...]

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or

1 recalled from the market or from use by any person
2 or organization because of a known or suspected
3 defect, deficiency, inadequacy or dangerous
condition in it.

4 CG 00 01 10 01

5 The 09-10 Policy, 10-11 Policy, and 11-12 Policy contain the
6 following Contractual Liability Exclusion:

7 **b. Contractual Liability**

8 "Bodily injury" or "property damage" for which the
9 insured is obligated to pay damages by reason of the
10 assumption of liability in a contract or agreement.
11 This exclusion does not apply to liability for
damages:

12 (1) That the insured would have in the absence of the
13 contract or agreement; or

14 (2) Assumed in a contract or agreement that is an
15 "insured contract", provided the "bodily injury"
16 or "property damage" occurs subsequent to the
17 execution of the contract or agreement. Solely for
18 the purposes of liability assumed in an "insured
19 contract", reasonable attorney fees and necessary
litigation expenses incurred by or for a party other
than an insured are deemed to be damages
because of "bodily injury" or "property damage",
provided:

20 (a) Liability to such party for, or for the cost of,
21 that party's defense has also been assumed in
22 the same "insured contract"; and

23 (b) Such attorney fees and litigation expenses are
for defense of that party against a civil or

1 alternative dispute resolution proceeding in
2 which damages to which this insurance
3 applies are alleged.

4 CG 00 01 10 01

5 The 12-13 Policy, 13-14 Policy, and 14-14 Policy contain the following
6 Contractual Liability Exclusion:

7 **b. Contractual Liability**

8 "Bodily injury" or "property damage" for which the
9 insured is obligated to pay damages by reason of the
10 assumption of liability in a contract or agreement.
11 This exclusion does not apply to liability for
12 damages:

13 (1) That the insured would have in the absence of the
14 contract or agreement; or

15 (2) Assumed in a contract or agreement that is an
16 "insured contract", provided the "bodily injury"
17 or "property damage" occurs subsequent to the
18 execution of the contract or agreement. Solely for
19 the purposes of liability assumed by you in an
20 "insured contract", reasonable attorney fees and
21 necessary litigation expenses incurred by or for a
22 party other than an insured will be deemed to be
23 damages because of "bodily injury" or "property
damage", provided:

(a) Liability to such party for, or for the cost of,
that party's defense has also been assumed by
you in the same "insured contract"; and

(b) Such attorney fees and litigation expenses are
for defense of that party against a civil or
alternative dispute resolution proceeding in

1 which damages to which this insurance
2 applies are alleged.

3 CG 00 01 10 01 as modified by CG D4 21 07 08

4 4.6 The 09-10 Policy, 10-11 Policy, and 11-12 Policy grant coverage for
5 personal injury, advertising injury, and web site liability under the following
6 Insuring Agreement (“Coverage B”):

7 **COVERAGE B PERSONAL INJURY,**
8 **ADVERTISING INJURY AND WEB SITE INJURY**
9 **LIABILITY**

10 **1. Insuring Agreement**

11 a. We will pay those sums that the insured becomes
12 legally obligated to pay as damages because of
13 “personal injury”, “advertising injury” or “web site
14 injury” to which this insurance applies. We will have
15 the right and duty to defend the insured against any
16 “suit” seeking those damages. However, we will have
17 no duty to defend the insured against any “suit”
18 seeking damages for “personal injury”, “advertising
19 injury” or “web site injury” to which this insurance
20 does not apply. We may, at our discretion, investigate
21 any “occurrence” or offense and settle any claim or
22 “suit” that may result. But:

19 (1) The amount we will pay for damages is limited as
20 described in Section **III** — Limits Of Insurance;
21 and

21 (2) Our right and duty to defend end when we have
22 used up the applicable limit of insurance in the
23 payment of judgments or settlements under
Coverages **A** or **B** or medical expenses under
Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments — Coverages **A** and **B**.

b. This insurance applies to:

- (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
- (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services; or
- (3) "Web site injury" caused by an offense committed in the course of the visual or audio presentation of material on "your web site" or in the numerical expression of computer code used to enable "your web site";

But only if the offense was committed in the "coverage territory" during the policy period.

With respect to subparagraph **b. (1)** above, bulletins, financial or annual reports, or newsletters that are not published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters will not be considered publishing.

CG 00 01 10 01 as modified by CG D2 34 01 05

The 12-13 Policy, 13-14 Policy, and 14-14 Policy contain the following Coverage B Insuring Agreement:

**COVERAGE B PERSONAL AND ADVERTISING
INJURY LIABILITY**

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** — Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments — Coverages **A** and **B**.

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

CG 00 01 10 01

1 4.7 The 09-10 Policy, 10-11 Policy, and 11-12 Policy contain the
2 following relevant Coverage B exclusions:

3 **2. Exclusions**

4 This insurance does not apply to:

5 **a. Knowing Violation Of Rights Of Another**

6 “Personal injury”, “advertising injury” or “web site
7 injury” caused by or at the direction of the insured
8 with the knowledge that the act would violate the
9 rights of another and would inflict “personal
10 injury”, “advertising injury” or “web site injury”.

11 **b. Material Published With Knowledge of Falsity**

12 “Personal injury”, “advertising injury” or “web site
13 injury” arising out of oral, written or electronic
14 publication of material, if done by or at the direction
15 of the insured with knowledge of its falsity.

16 [...]

17 **e. Contractual Liability**

18 “Personal injury”, “advertising injury” or “web site
19 injury” for which the insured has assumed liability
20 in a contract or agreement. This exclusion does not
21 apply to:

22 **(1)** “Personal injury” liability assumed in a contract
23 or agreement that is a “insured contract”,
provided the “personal injury” arises out of an
offense committed subsequent to the execution
of the contract or agreement. Solely for the
purposes of liability assumed in “insured
contract”, reasonable attorney fees and
necessary litigation expenses incurred by or for
a party other than an insured are deemed to be

1 damages because of “personal injury” provided:

2 (a) Liability to such party for, or the cost of,
3 that party’s defense has also been assumed
4 in the same “insured contract”; and

5 (b) Such attorney fees and litigation expenses
6 are for defense of that party against a civil or
7 alternative dispute resolution proceeding in
8 which damages to which this insurance
9 applies are alleged; or

10 (2) “Personal injury”, “advertising injury” or “web
11 site injury” that the insured would have in the
12 absence of the contract or agreement.

13 **f. Breach of Contract**

14 “Advertising injury” or “web site injury” arising out
15 of a breach of contract.

16 [...]

17 **n. Dishonest, Fraudulent Or Malicious Acts**

18 “Web site injury” arising out of dishonest,
19 fraudulent, criminal or malicious acts, errors or
20 omissions committed by any insured, or by anyone
21 for whom the insured is legally responsible,
22 whether acting alone or with other insureds.

23 CG 00 01 10 01, as modified by CG D2 34 01 05; see also CG D3 16 07 04

The 12-13 Policy, 13-14 Policy, and 14-14 Policy contain the following
relevant Coverage B exclusions:

2. Exclusions

This insurance does not apply to:

1
2 **a. Knowing Violation Of Rights Of Another**

3 “Personal and advertising injury” caused by or at
4 the direction of the insured with the knowledge that
5 the act would violate the rights of another and would
6 inflict “personal and advertising injury.”

7 **b. Material Published With Knowledge of Falsity**

8 “Personal injury” or “advertising injury” arising out
9 of oral or written publication, including publication
10 by electronic means, of material, if done by or at the
11 direction of the insured with knowledge of its
12 falsity.

13 [...]

14 **e. Contractual Liability**

15 “Personal and advertising injury” for which the
16 insured has assumed liability in a contract or
17 agreement. This exclusion does not apply to liability
18 for damages that the insured would have in the
19 absence of the contract or agreement.

20 This exclusion also does not apply to liability for
21 damages because of “personal injury” assumed by
22 you in a contract or agreement that is an “insured
23 contract”, provided that the “personal injury” is
caused by an offense committed subsequent to the
execution of the contract or agreement. Solely for
the purposes of liability assumed by you in an
“insured contract”, reasonable attorney fees and
necessary litigation expenses incurred by or for a
party other than an insured will be deemed to be
damages because of “personal injury”, provided
that:

(a) Liability to such party for, or the cost of, that
party’s defense has also been assumed in the

1 same “insured contract”; and

2 (b) Such attorney fees and litigation expenses are
3 for defense of that party against a civil or
4 alternative dispute resolution proceeding in
5 which damages to which this insurance applies
6 are alleged.

7 **f. Breach of Contract**

8 “Advertising injury” arising out of a breach of
9 contract.

CG 00 01 10 01 as modified by CG D4 71 02 09

10 4.8 The 14-14 Policy contains the following endorsement with regard to
11 defense cost reimbursement:

12 **WASHINGTON CHANGES – DEFENSE COSTS**

13 This endorsement modifies insurance provided under the
14 following:

15 [...]

16 **COMMERCIAL GENERAL LIABILITY COVERAGE
PART**

17 [...]

18 **A.** The provisions of Paragraph **B.** are added to all
19 Insuring Agreements that set forth a duty to defend
20 under:

21 **1.** Section **I** of the Commercial General Liability

22 [...]

23 Paragraph **B.** also applies to any other provision in the
policy that sets forth a duty to defend.

B. If we initially defend an insured (“insured”) or pay for
an insured’s (“insured’s”) defense but later determine
that none of the claims (“claims”), for which we

1 provided a defense or defense costs, are covered under
2 this insurance, we have the right to reimbursement for
3 the defense costs we have incurred. The right to
4 reimbursement under this provision will only apply to
5 the costs we have incurred after we notify you in
6 writing that there may not be coverage and that we are
reserving our rights to terminate the defense or the
payment of defense costs and to seek reimbursement
for defense costs.

7 IL 01 23 11 13

8 4.9 The 09-10 Policy, 10-11 Policy, and 11-12 Policy contain the
9 following terms with regard to duties of an insured in event of a loss:

10 **SECTION IV - COMMERCIAL GENERAL**
11 **LIABILITY CONDITIONS**

12 [...]

13 **2. Duties In The Event Of Occurrence, Offense, Claim**
Or Suit

14 **a.** You must see to it that we are notified as soon as
15 practicable of an "occurrence" or an offense which
16 may result in a claim. To the extent possible, notice
should include:

17 **(1)**How, when and where the "occurrence" or
18 offense took place;

19 **(2)**The names and addresses of any injured persons
and witnesses; and

20 **(3)**The nature and location of any injury or damage
21 arising out of the "occurrence" or offense.

22 **b.** If a claim is made or "suit" is brought against any
23 insured, you must:

1 (1) Immediately record the specifics of the claim or
2 "suit" and the date received; and

3 (2) Notify us as soon as practicable.

4 You must see to it that we receive written notice of
5 the claim or "suit" as soon as practicable.

6 c. You and any other involved insured must:

7 (1) Immediately send us copies of any demands,
8 notices, summonses or legal papers received in
9 connection with the claim or "suit";

10 (2) Authorize us to obtain records and other
11 information;

12 (3) Cooperate with us in the investigation or
13 settlement of the claim or defense against the
14 "suit"; and

15 (4) Assist us, upon our request, in the enforcement
16 of any right against any person or organization
17 which may be liable to the insured because of
18 injury or damage to which this insurance may
19 also apply.

20 d. No insured will, except at that insured's own cost,
21 voluntarily make a payment, assume any obligation,
22 or incur any expense, other than for first aid, without
23 our consent.

Notice of an "occurrence" or of an offense which may
result in a claim must be given as soon as practicable after
knowledge of the "occurrence" or offense has been
reported to you, or one of you "executive officers" (if you
are a corporation), one of your partners who is an
individual (if you are a partnership), one of your managers
(if you are a limited liability company), or an "employee"

(such as an insurance, loss control or risk manager or administrator) designated by you to give such notice.

Knowledge by another “employee” of an “occurrence” or offense does not imply that you also have such knowledge.

Notice to us of such “occurrence” or of an offense which may result in a claim will be deemed to be given as soon as practicable to us if it is given in good faith as soon as practicable to your workers’ compensation insurer. This applies only if you subsequently gave notice of the “occurrence” or offense to us as soon as practicable after you, one of you “executive officers” (if you are a corporation), one of your partners who is an individual (if you are a partnership), one of your managers (if you are a limited liability company), or an “employee” (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice discovers that the “occurrence” or offense may involve this policy.

CG 00 01 10 01

The 12-13 Policy, 13-14 Policy, and 14-14 Policy contain the following terms with regard to duties of an insured in event of a loss:

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

[...]

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;

1
2 (2) The names and addresses of any injured persons
3 and witnesses; and

4 (3) The nature and location of any injury or damage
5 arising out of the "occurrence" or offense.

6 **b.** If a claim is made or "suit" is brought against any
7 insured, you must:

8 (1) Immediately record the specifics of the claim or
9 "suit" and the date received; and

10 (2) Notify us as soon as practicable.

11 You must see to it that we receive written notice of
12 the claim or "suit" as soon as practicable.

13 **c.** You and any other involved insured must:

14 (1) Immediately send us copies of any demands,
15 notices, summonses or legal papers received in
16 connection with the claim or "suit";

17 (2) Authorize us to obtain records and other
18 information;

19 (3) Cooperate with us in the investigation or
20 settlement of the claim or defense against the
21 "suit"; and

22 (4) Assist us, upon our request, in the enforcement
23 of any right against any person or organization
which may be liable to the insured because of
injury or damage to which this insurance may
also apply.

d. No insured will, except at that insured's own cost,
voluntarily make a payment, assume any obligation,

1 or incur any expense, other than for first aid, without
2 our consent.

3 **e.** The following provisions apply to Paragraph **a.**
4 above, but only for the purposes of insurance
5 provided under this Coverage Part to you or any
6 insured listed in Paragraph **1.** or **2.** of Section **II** –
7 Who Is An Insured:

8 **(1)** Notice to us of such “occurrence” or offense
9 must be given as soon as practicable only after
10 the “occurrence” or offense is known by you (if
11 you are an individual), any of your partners or
12 members who is an individual (if you are a
13 partnership or joint venture), any of you
14 managers who is an individual (if you are a
15 limited liability company), any of you
16 “executive officers” or directors (if you are an
17 organization other than a partnership, joint
18 venture, or limited liability company) or any
19 “employee” authorized by you to give notice of
20 an “occurrence” or offense.

21 **(2)** If you are a partnership, joint venture or limited
22 liability company, and none of your partners,
23 joint venture members or managers are
individuals, notice to us of such “occurrence” or
offense must be given as soon as practicable only
after the “occurrence” or offense is known by:

(a) any individual who is:

(i) A partner or member of that partnership
or joint venture;

(ii) A manager of any limited liability
company; or

(iii) An executive officer or director of any

1 other organization;

2 That is your partner, joint venture member or
3 manager; or

4 **(b)** Any “employee” authorized by such
5 partnership, joint venture, limited liability
6 company or other organization to give notice
of an “occurrence” or offense.

7 **(3)** Notice to us of such “occurrence” or of an
8 offense will be deemed to be given as soon as
9 practicable if it is given in good faith as soon as
10 practicable to your workers’ compensation
11 insurer. This applies only if you subsequently
12 gave notice to us of the “occurrence” or offense
13 as soon as practicable after any of the persons
described in Paragraphs **e. (1)** or **(2)** above
discovers that the “occurrence” or offense may
result in sums to which the insurance provided
under this Coverage part may apply.

14 However, if this Coverage Part includes an
15 endorsement that provides limited coverage for “bodily
16 injury” or “property damage” [...], this Paragraph **e.**
does not affect that requirement.

17 CG 00 01 10 01 as modified by CG D3 16 11 11

18 4.10 The 09-14 Policies contain the following definitions relevant to the
19 above-referenced provisions:

20 **8.** "Impaired property" means tangible property, other
21 than "your product" or "your work", that cannot be used
22 or is less useful because:

23 **a.** It incorporates "your product" or "your work" that
is known or thought to be defective, deficient,

1 inadequate or dangerous; or

2 **b.** You have failed to fulfill the terms of a contract or
3 agreement;

4 if such property can be restored to use by:

5 **a.** The repair, replacement, adjustment or removal of
6 "your product" or "your work"; or

7 **b.** Your fulfilling the terms of the contract or
8 agreement.

9 [...]

10 **13.** "Occurrence" means an accident, including continuous
or repeated exposure to substantially the same general
harmful conditions.

11 [...]

12 **16.** "Products-completed operations hazard":

13 **a.** Includes all "bodily injury" and "property damage"
14 occurring away from premises you own or rent and
arising out of "your product" or "your work" except:

15 (1) Products that are still in your physical
16 possession; or

17 (2) Work that has not yet been completed or
18 abandoned. However, "your work" will be
19 deemed completed at the earliest of the
following times:

20 (a) When all of the work called for in your
21 contract has been completed.

22 (b) When all of the work to be done at the job site
23 has been completed if your contract calls for
work at more than one job site.

1 (c) When that part of the work done at a job site
2 has been put to its intended use by any person
3 or organization other than another contractor
4 or subcontractor working on the same
5 project.

6 Work that may need service, maintenance,
7 correction, repair or replacement, but which is
8 otherwise complete, will be treated as
9 completed.

10 **b.** Does not include "bodily injury" or "property
11 damage" arising out of:

12 (1) The transportation of property, unless the injury
13 or damage arises out of a condition in or on a
14 vehicle not owned or operated by you, and that
15 condition was created by the "loading or
16 unloading" of that vehicle by any insured;

17 (2) The existence of tools, uninstalled equipment or
18 abandoned or unused materials; or

19 (3) Products or operations for which the
20 classification, listed in the Declarations, in a
21 policy schedule or in our manual of rules, states
22 that the products-completed operations are
23 subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all
resulting loss of use of that property. All such loss of
use shall be deemed to occur at the time of the
physical injury that caused it; or

b. Loss of use of tangible property that is not physically
injured. All such loss of use shall be deemed to occur

1 at the time of the "occurrence" that caused it.

2 For the purposes of this insurance, electronic data is not
3 tangible property.

4 As used in this definition, electronic data means
5 information, facts or programs stored as or on, created
6 or used on, or transmitted to or from computer software,
7 including systems and applications software, hard or
8 floppy disks, CD-ROMS, tapes, drives, cells, data
processing devices or any other media which are used
with electronically controlled equipment.

9 **18.** "Suit" means a civil proceeding in which damages
10 because of "bodily injury", "property damage" or
11 "personal and advertising injury" to which this
insurance applies are alleged. "Suit" includes:

12 **a.** An arbitration proceeding in which such damages
13 are claimed and to which the insured must submit or
does submit with our consent; or

14 **b.** Any other alternative dispute resolution proceeding
15 in which such damages are claimed and to which the
insured submits with our consent.

16 [...]

22. "Your work":

17 **a.** Means:

18 **(1)** Work or operations performed by you or on your
19 behalf; and

20 **(2)** Materials, parts or equipment furnished in
21 connection with such work or operations.

22 **b.** Includes

23 **(1)** Warranties or representations made at any time

1 with respect to the fitness, quality, durability,
2 performance or use of "your work", and

3 **(2)** The providing of or failure to provide warnings
4 or instructions.

5 CG 00 01 10 01

6 The 09-10 Policy, 10-11 Policy, and 11-12 Policy contain the following
7 definition of "insured contract":

8 **9.** "Insured contract" means:

9 **a.** A contract for a lease of premises. However, that
10 portion of the contract for a lease of premises that
11 indemnifies any person or organization for damage
12 to premises while rented to you, or temporarily
13 occupied by you with permission of the owner,
14 caused by: fire; explosion; lightning; smoke
resulting from such fire, explosion, or lightning; or
water, is not an "insured contract";

15 **b.** A sidetrack agreement;

16 **c.** Any easement or license agreement, except in
17 connection with construction or demolition
18 operations on or within 50 feet of a railroad;

19 **d.** An obligation, as required by ordinance, to
20 indemnify a municipality, except in connection
with work for a municipality;

21 **e.** An elevator maintenance agreement;

22 **f.** That part of any other contract or agreement
23 pertaining to your business (including an
indemnification of a municipality in connection

1 with work performed for a municipality) under
2 which you assume the tort liability of another party
3 to pay for “bodily injury”, “property damage”, or
4 “personal injury” to a third party or organization.
5 Tort liability means a liability that would be
imposed by law in the absence of any contract or
agreement.

6 CG 00 01 10 01 as modified by CG D2 34 01 05 and CG D3 16 07 04

7 The 12-13 Policy, 13-14 Policy, and 14-14 Policy contain the following
8 definition of “insured contract”:

9 **9. "Insured contract" means:**

- 10
- 11 **a.** A contract for a lease of premises. However, that
12 portion of the contract for a lease of premises that
13 indemnifies any person or organization for
“premises damage” is not an “insured contract”;
- 14 **b.** A sidetrack agreement;
- 15 **c.** Any easement or license agreement, except in
16 connection with construction or demolition
17 operations on or within 50 feet of a railroad;
- 18 **d.** An obligation, as required by ordinance, to
19 indemnify a municipality, except in connection with
work for a municipality;
- 20 **e.** An elevator maintenance agreement;
- 21 **f.** That part of any other contract or agreement
22 pertaining to your business (including an
23 indemnification of a municipality in connection
with work performed for a municipality) under
which you assume the tort liability of another party

1 to pay for “bodily injury”, “property damage”, or
2 “personal injury” to a third party or organization.
3 Tort liability means a liability that would be
imposed by law in the absence of any contract or
agreement.

4 [...]

5 “Premises damage” means “property damage” to:

- 6 **a.** Any premise while rented to you or temporarily
occupied by you with permission of the owner; or
7
8 **b.** The contents of any premises while such premises is
rented to you, if you rent such premises for a period of
9 seven or fewer consecutive days.

10 CG 00 01 10 01 as modified by CG D4 71 02 09 and CG D3 16 11 11

11 The 09-10 Policy, 10-11 Policy, and 11-12 Policy contain the following
12 definitions for “advertising injury”, “personal injury”, “suit”, “web site injury” and
13 “your web site”:
14

15 “Advertising injury” means injury, arising out of one or
16 more of the following offenses:

- 17 **a.** Oral, written or electronic publication of material that
slanders or libels a person or organization or disparages
18 a person’s or organization’s goods, products or services,
provided that claim is made or “suit” is brought by a
19 person or organization that claims to have been
slandered or libeled, or whose goods, products or
20 services have allegedly been disparaged;
- 21 **b.** Oral, written or electron publication of material that
appropriates a person’s likeness, unreasonably places a
22 person in a false light or gives unreasonable publicity to
23 a person’s private life; or

1 **c.** Infringement of copyright, title or slogan, provided that
2 claim is made or “suit” is brought by a person or
3 organization claiming ownership of such copyright, title
 or slogan.

4 “Personal Injury” means injury, other than “bodily
5 injury”, arising out of one or more of the following
 offenses:

6 [...]

7 **c.** The wrongful eviction from, wrongful entry into, or
8 invasion of the right of private occupancy of a room,
9 dwelling or premises that a person occupies by or on
10 behalf of its owner, landlord or lessor, provided that the
 wrongful eviction, wrong for entry or invasion of the
 right of private occupancy is performed by or on behalf
 of the owner, landlord or lessor of the room, dwelling or
 premises;

11 **d.** Oral, written or electronic publication of material that
12 slanders or libels a person or organization or disparages
13 a person’s or organization’s goods, products or services,
14 provided that claim is made or “suit” is brought by a
15 person or organization that claims to have been
 slandered or libeled, or whose goods, products or
 services have allegedly been disparaged; or

16 [...]

17 “Suit” means a civil proceeding in which damages because
18 of “bodily injury”, “property damage”, “Personal injury”,
 “advertising Injury” or “website injury” to which this
 insurance applies are alleged. “Suit” includes:

19 **a.** An arbitration proceeding in which such damages are
20 claimed and to which you must submit or do submit
 with our consent; or

21 **b.** Any other alternative dispute resolution proceeding in
22 which such damages are claimed and to which you
 submit with our consent.

23 [...]

1 “Web site injury” means injury, other than “personal
2 injury” or “advertising injury”, arising out of one or more
3 of the following offenses:

4 **a.** Oral, written or electronic publication of material that
5 slanders or libels a person or organization or disparages
6 a person’s or organization’s goods, products or services,
7 provided that claim is made or “suit” is brought by a
8 person or organization that claims to have been
9 slandered or libeled, or whose goods, products or
10 services have allegedly been disparaged;

[...]

11 “Your web site” means all computer files and data which
12 may be accessed via the Internet using the Universal
13 Resource Locator that includes any domain name owned
14 by or assigned to you.

15 CG 00 01 10 01 as modified by CG D2 34 01 05

16 The 12-13 Policy, 13-14 Policy, and 14-14 Policy contain the following
17 definitions for “advertisement”, “advertising injury”, “personal injury”, and
18 “personal and advertising injury”:

19 **1.** "Advertisement" means a notice that is broadcast or
20 published to the general public or specific market
21 segments about your goods, products or services for the
22 purpose of attracting customers or supporters. For the
23 purposes of this definition:

a. Notices that are published include material placed
on the internet or on similar electronic means of
communication; and

b. Regarding websites, only that part of a website that
is about your goods, products or services for the
purposes of attracting customers or supporters is
considered an advertisement.

1 [...] 2

14. “Personal and advertising injury” means “personal injury” or “advertising injury”.

3 [...]

“Advertising Injury”:

4
5 **a.** Means injury, other than “personal injury”, caused by one or more of the following offenses:

6 (1) Oral or written publication, including publication by
7 electronic means, of material in your
8 “advertisement” that slanders or libels a person or
9 organization or disparages a person’s or
10 organization’s goods, products or services,
11 provided that the claim is made or “suit” is brought
12 by a person or organization that claims to have been
13 slandered or libeled, or that claims to have had its
14 goods, products or services disparaged;

12 [...]

b. Includes “bodily injury” caused by one or more of the
13 offenses described in Paragraph **a.** above.

14 [...]

“Personal injury”:

15 **a.** Means injury, other than “advertising injury”, caused by
16 one or more of the following offenses:

17 (1) False arrest, dentition or imprisonment;

18 (2) Malicious prosecution;

19 (3) The wrongful eviction from, wrongful entry into, or
20 invasion of the right of private occupancy of a room,
21 dwelling or premises that a person occupies, provided
22 that the wrongful eviction, wrongful entry, or
23 invasion of the right of private occupancy is
committed by or on behalf of the owner, landlord or
lessor of that room, dwelling or premises;

(4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or

[...]

b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.

CG 00 01 10 01 as amended by CG D4 71 02 09

C. Identification of the Commercial Excess Liability Policies

4.11 Travelers also issued business/commercial excess liability (umbrella) policies to CAG, CRM, and LSL which were in effect from April 26, 2009 through November 1, 2014. These policies provided commercial general liability coverage under the terms and conditions set forth therein. The excess policy numbers and policy periods are set forth below:

Policy Number	Insuring Entity	Policy Period	Hereinafter Referred to As:
DTSM-CUP-2442M85A-TIL-09	TPCCA	04/26/09-04/26/10	09-10 Excess Policy
DTSM-CUP-2442M85A-TIL-10	TPCCA	04/26/10-04/26/11	10-11 Excess Policy
DTSM-CUP-2442M85A-TIL-11	TPCCA	04/26/11-04/26/12	11-12 Excess Policy
DTSM-CUP-2442M85A-TIL-12	TPCCA	04/26/12-04/26/13	12-13 Excess Policy
DTSM-CUP-2442M85A-TIL-13	TPCCA	04/26/13-04/26/14	13-14 Excess Policy
DTSM-CUP-2442M85A-	TPCCA	04/26/14-	14-14 Excess

TIL-14		11/01/14	Policy
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The above-referenced excess policies are hereinafter collectively referred to as the “Excess Policies”.

4.12 The 09-10 Excess Policy, 10-11 Excess Policy, 11-12 Excess Policy, and 12-13 Excess Policy provide excess liability coverage with limits up to \$2,000,000 each occurrence and \$2,000,000 general aggregate. The 13-14 Excess Policy and 14-14 Excess Policy provide excess liability coverage with limits up to \$5,000,000 each occurrence and \$5,000,000 general aggregate. The Excess Policies also include a \$10,000 retained limit of liability.

4.13 The Excess Policies identify the Underlying Insurance as follows:

Excess Policy	Underlying General Liability Insurance
09-10 Excess Policy (DTSM-CUP-2442M85A-TIL-09)	09-10 Policy (DT-CO-2442M85A-IND-09)
10-11 Excess Policy (DTSM-CUP-2442M85A-TIL-10)	10-11 Policy (DT-CO-2442M85A-IND-10)
11-12 Excess Policy (DTSM-CUP-2442M85A-TIL-11)	11-12 Policy (DT-CO-2442M85A-COF-11)
12-13 Excess Policy (DTSM-CUP-2442M85A-TIL-12)	12-13 Policy (DT-CO-2442M85A-COF-12)
13-14 Excess Policy (DTSM-CUP-2442M85A-TIL-13)	13-14 Policy (DT-CO-2442M85A-IND-13)
14-14 Excess Policy (DTSM-CUP-2442M85A-TIL-14)	14-14 Policy (DT-CO-2442M85A-IND-14)

D. Provisions of the Commercial Excess Liability Policies

4.14 The Excess Policies contain the same provisions as the 09-14 Policies

1 with regard to who qualifies as an insured. See form UM 00 01 11 03.

2 4.15 The Excess Policies contain the following commercial excess insuring
3 agreement:

4
5 **COMMERCIAL EXCESS LIABILITY**
6 **(UMBRELLA) INSURANCE**

7 [...]

8 **SECTION I – COVERAGES**

9 **COVERAGE A. BODILY INJURY AND**
10 **PROPERTY DAMAGE LIABILITY; and**
11 **COVERAGE B. PERSONAL INJURY AND**
12 **ADVERTISING INJURY LIABILITY.**

13 **1. INSURING AGREEMENT.**

- 14 **a.** We will pay on behalf of the insured the “ultimate
15 net loss” in excess of the “applicable underlying
16 limit” which the insured becomes legally obligated
17 to pay as damages because of “bodily injury”,
18 “property damage”, “personal injury” or
19 “advertising injury” to which this insurance applies.

20 This insurance applies to “bodily injury” or
21 “property damage” only if:

- 22 **(i)** The “bodily injury” or “property damage”
23 is caused by an “occurrence” that takes
place anywhere in the world;
- (ii)** The “bodily injury” or “property damage”
occurs during the policy period;
- (iii)** Prior to the policy period, no insured listed
under Paragraph **1.** of **SECTION II –**
WHO IS AN INSURED and no employee
authorized by you to give or receive notice

of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized employee knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

This insurance applies to "personal injury" or "advertising injury" caused by an "offense" committed during the policy period, anywhere in the world.
[...]

- c. “Property damage” that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the “occurrence” that caused it.
- d. The amount we will pay for damages is limited as described in **SECTION III – LIMITS OF INSURANCE.**

The following provisions apply only with respect to Parts **1.a.(i), (ii) and (iii)** above:

- 1. “Bodily injury” or “property damage which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1.** of **Section II – Who Is An Insured** or any employee authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or resumption of that “bodily injury” or “property damage” after the end of the policy period.

1 2. “Bodily injury” or “property damage” will be
2 deemed to have been known to have occurred at the
3 earliest time when any insured listed under
4 Paragraph 1. of **SECTION II – WHO IS AN**
5 **INSURED** or any employee authorized by you to
6 give or receive notice of an “occurrence” or claim:

7 (a) Reports all, or any part, of the “bodily injury” or
8 “property damage” to us or any other insurer;

9 (b) Receives a written or verbal demand or claim for
10 damages because of “bodily injury” or “property
11 damage”; or

12 (c) Becomes aware by any other means that “bodily
13 injury” or “property damage” has occurred or
14 has begun to occur.

15 **2. DEFENSE OF CLAIMS OR SUITS.**

16 a. We will have no duty to defend any claim or “suit”
17 that any other insurer has a duty to defend. If we
18 elect to join in the defense of such claims or “suits”,
19 we will pay all expenses we incur.

20 b. We will have the right and duty to defend any “suit”
21 for damages which are payable under Coverages **A**
22 or **B** (including damages wholly or partly within the
23 “retained limit”) but which are not payable by a
24 policy of “underlying insurance”, or any other
25 available insurance, because:

26 (1) Such damages are not covered; or

27 (2) The “underlying insurance” has been
28 exhausted by the payment of claims.

29 c. We may investigate and settle any claim or “suit” in
30 b. above at our discretion.

31 d. Our right and duty in b. above end when we have

1 used up the “applicable limit of insurance” in the
2 payment of judgments or settlements.

3 e. We will pay, with respect to any claim or “suit” we
4 defend in b. above:

5 (1) All expenses we incur,

6 (2) The cost of appeal bonds and bonds to release
7 attachments, but only for bond amounts within
8 the “applicable limit of insurance”. We do not
9 have to furnish these bonds.

10 (3) All reasonable expenses incurred by the insured
11 at our request to assist us in the investigation or
12 defense of the claim or “suit”, including actual
13 loss of earnings up to \$250 a day because of
14 time off from work.

15 (4) All costs taxed against the insured in the “suit”,

16 (5) All interest on the full amount of any judgment
17 that accrues after entry of the judgment and
18 before we have:

19 (a) paid, or offered to pay; or

20 (b) deposited in court;

21 The part of the judgement that is within the
22 “applicable limit of insurance”.

23 (6) Prejudgment interest awarded against the
insured on the part of the judgment we pay. If
we make an offer to pay the “applicable limit of
insurance”, we will not pay any prejudgment
interest based on that period of time after the
offer.

1 These payments will not reduce the limits of insurance.

2 UM 00 01 11 03

3 The 12-13 Excess Policy, 13-14 Excess policy, and 14-14 Excess Policy
4 contain the following modifying endorsement:
5

6 **AMENDMENT OF DEFENSE OF CLAIMS OR**
7 **SUITS – REASONABLE EXPENSES INCURRED**
8 **BY THE INSURED AT OUR REQUEST**

9 [...]

10 The following replaces Paragraph e.(3) of Paragraph 2.,
11 **DEFENSE OF CLAIMS OR SUITS., of SECTION I –**
12 **COVERAGE A. BODILY INJURY AND PROPERTY**
13 **DAMAGE LIABILITY; and COVERAGE B.**
14 **PERSONAL INJURY AND ADVERTISING INJURY**
15 **LIABILITY.:**

16 (3) All reasonable expenses incurred by the insured at our
17 request to assist us in the investigation or defense of the
18 claim or “suit”, including actual loss of earnings up to
19 \$500 a day because of time off from work.

20 UM 04 75 07 08

21 The 11-12 Excess Policy, 12-13 Excess Policy, 13-14 Excess policy, and 14-
22 14 Excess Policy contain the following endorsement regarding crisis management
23 services:

Crisis Management Service Expenses

 We will reimburse you, or pay on your behalf, "crisis
 management service expenses" incurred for a "crisis
 management event" that:

 (1) First commences during the policy period; and

1
2 (2) You report to us by telephone within 24 hours after it
3 first commences.

4 The amount we will pay for "crisis management service
5 expenses" is limited as described in **SECTION III**
6 **LIMITS OF INSURANCE**. A "crisis management
7 event" will be deemed to first commence at the time when
8 any of your "designated executive officers" first becomes
9 aware of any "occurrence" or "offense" resulting in such
10 "crisis management event".

11 The "retained limit" does not apply to "crisis management
12 service expenses".

13 Any payment of "crisis management service expenses"
14 that we make under this policy will not be determinative
15 of our obligations under this policy with respect to any
16 claim or "suit" or create any duty to defend or indemnify
17 any insured for any claim or "suit".

18 UM 06 03 11 10

19 4.16 The Excess Policies contain the following relevant exclusions:

20 **3. EXCLUSIONS.**

21 This insurance does not apply to:
22 [...]

23 **b. "Advertising Injury" "Offenses"**

(1) Breach of Contract

"Advertising injury" arising out of a breach of
contract,
[...]

d. Contractual Liability

"Bodily injury", "property damage", "personal

injury” or “advertising injury” for which the insured assumed liability under a contract or agreement. This exclusion does not apply to “bodily injury”, “property damage”, “personal injury” or “advertising injury” to which any policy of “underlying insurance” listed in the SCHEDULE OF UNDERLYING INSURANCE of the DECLARATIONS of this insurance, or any renewal or replacement thereof, applies or would apply but for the exhaustion of its limits of liability. Coverage provided will follow the same provisions, terms, definitions, exclusions, limitations and conditions of policy(ies) of “underlying insurance” listed in the SCHEDULE OF UNDERLYING INSURANCE of the DECLARATIONS of this insurance.

UM 00 01 11 03 as amended by UM 04 04 11 03 and UM 05 11 02 09

The 09-10 Excess Policy, 10-11 Excess Policy, and 11-12 Excess Policy contain the following exclusion for real and/or personal property:

EXCLUSION – REAL AND/OR PERSONAL PROPERTY

[...]

This endorsement modifies the insurance provided for the following property:

[...]

☒ Real property

☒ Personal property

As respects the type(s) of property checked above, this insurance does not apply to “property damage” to:

1. property you own, rent, or occupy;

2. property loaned to you; or

1
2 **3.** property in your care, custody, or control.

3 Parts **2.** And **3.** Above do not apply to liability assumed
4 under a sidetrack agreement.

5 UM 00 30 01 86

6 4.17 The Excess Policies exclude coverage for **Expected or Intended**
7 **Injury, Knowing Violation Of Rights Of Another, Material Published With**
8 **Knowledge of Falsity, Damage to Property, Damage to Impaired Property Or**
9 **Property Not Physically Injured, and Recall of Products, Work Or Impaired**
10 **Property** under substantively the same language contained in the 09-14 Policies
11 discussed above. *See* ¶ 4.5 and 4.7.

12 4.18 The 09-10 Excess Policy, 10-11 Excess Policy, and 11-12 Excess
13 Policy contain the Excess Personal, Advertising and Web Site Injury Liability
14 Endorsement, form UM 03 55 08 00 (hereinafter, the “EPAW Endorsement”):

15
16 **EXCESS PERSONAL, ADVERTISING AND WEB**
17 **SITE**
18 **INJURY LIABILITY**

19 [...]

20 Only as respects the insurance provided by this
21 endorsement, none of the insuring agreements, terms,
22 definitions or exclusions of the policy to which this
23 endorsement is attached apply, except for **SECTION IV -**
 CONDITIONS.

SECTION I – INSURING AGREEMENT

1. We will pay on behalf of the insured those sums, in

1 excess of the amount payable under the terms of any
2 Personal, Advertising and Web Site Injury Liability
3 Insurance included in the “underlying insurance”, that
4 the insured becomes le-gally obligated to pay as
5 damages because of:

6 **a.** “Personal injury” and “advertising injury”; and,

7 **b.** “Web site injury” caused by an offense committed
8 in the course of the visual or audio presentation of
9 material on “your web site” or in the numerical
10 expression of computer code used to enable “your
11 web site”;

12 provided that the Personal, Advertising and Web
13 Site Injury Liability Insurance applies or would
14 apply except for the exhaustion of its “underlying
15 personal, advertising or web site injury liability
16 limit”,

17 **2.** The amount we will pay is limited as described in
18 **SECTION III – LIMITS OF INSURANCE** in this
19 endorsement.

20 **3.** This insurance is subject to the same insuring
21 agreements, terms, definitions, exclusions and
22 conditions as any Personal, Advertising and Web Site
23 Injury Liability Insurance included in the “underlying
insurance”, except for the provisions of this
endorsement.

24 **SECTION II – WHO IS AN INSURED**

25 Any person or organization qualifying as an insured
26 subject to the terms and provisions of any Personal,
27 Advertising and Web Site Injury Liability Insurance
28 included in the “underlying insurance” is an insured under
29 the insurance provided by this endorsement.

1 **SECTION III – LIMITS OF INSURANCE**

2 **1.** As respects the insurance provided by this
3 endorsement, the Limit of Insurance shown in the
4 Declarations of the policy to which this endorsement is
5 attached and the rules below fix the most we will pay
6 regardless of the number of:

7 **a.** Insureds;

8 **b.** Claims made or “suits” brought; or

9 **c.** Persons or organizations making claims or bringing
10 “suits”.

11 **2.** The General Aggregate Limit shown in the
12 Declarations of the policy to which this endorsement is
13 attached is the most we will pay for all sums payable
14 under this endorsement.

15 The sum of all payments made under this endorsement
16 and all payments made under the policy to which it is
17 attached shall not exceed the General Aggregate Limit
18 shown on the Declarations of the policy to which this
19 endorsement is attached.

20 **3.** Subject to **2.** Above, the Personal, Advertising and Web
21 Site Injury Limit is the most we will pay under
22 COVERAGE B for the sum of all damages because of
23 all “personal injury”, all “advertising injury” and all
 “web site injury” sustained by any one person or
 organization.

24 **SECTION IV – MAINTENANCE OF UNDERLYING**
25 **PERSONAL, ADVERTISING AND WEBSITE IN-**
26 **JURY LIABILITY INSURANCE**

27 The insurance afforded by the Personal, Advertising and
28 Web Site Injury Liability insurance included in the

1 “underlying insurance” in the Declarations of the policy to
2 which this endorsement is attached will be maintained for
3 the full term of this endorsement. This provision does not
4 apply to the reduction of the “underlying personal,
5 advertising and web site injury liability limit” due to
6 payment of claims or “suits” arising out of damages. As
7 coverage for Personal, Advertising and Web Site Injury
8 Liability insurance included in the “underlying insurance”
9 expires, you will renew it at limits at least equal to the
10 expiring limits of insurance.

11 If you fail to comply with the above, this insurance is not
12 invalidated. However, in the event of a loss, we will pay
13 only to the extent that we would have paid had you so
14 complied.

15 **SECTION V – CONDITIONS**

16 Any references to “advertising injury” or “personal injury”
17 throughout **SECTION IV – CONDITIONS** of the policy
18 to which this endorsement is attached, will have the same
19 meaning as defined below in **SECTION VI –**
20 **DEFINITIONS** of this endorsement.

21 **SECTION VI – DEFINITIONS**

- 22 1. “Advertising injury” has the same meaning as defined
23 in any Personal, Advertising and Web Site Injury
Liability insurance included in the “underlying
insurance” of policies listed in the Schedule of
Underlying Insurance on the policy to which this
endorsement is attached.
2. “Personal injury” has the same meaning as defined in
any Personal, Advertising and Web Site Injury
Liability insurance included in the “underlying
insurance” of policies listed in the Schedule of
Underlying Insurance on the policy to which this
endorsement is attached.

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3. “Suit” has the same meaning as defined in any Personal, Advertising and Web Site Injury Liability insurance included in the “underlying insurance” of policies listed in the Schedule of Underlying Insurance on the policy to which this endorsement is attached.
4. “Underlying insurance” means the policy(ies) listed in the Schedule of Underlying Insurance on the policy to which this endorsement is attached, and includes any renewal or replacement of such policy(ies).
5. “Underlying insurer” means any insurer which provides a policy(ies) listed in the Schedule of Underlying Insurance on the policy to which this endorsement is attached.
6. “Underlying personal, advertising and web site injury liability limit” means the amount of insurance stated in the “underlying insurance” in the Declarations of the policy to which this endorsement is attached, less the amount by which any aggregate limit so stated has been reduced solely due to payment of claims.

The limits of insurance in any policy of “underlying insurance” will apply even if:

 - a. The “underlying insurer” claims the insured failed to comply with any condition of the policy; or
 - b. The “underlying insurer” becomes bankrupt or insolvent.
7. “Your web site” has the same meaning as de-fined in any Personal, Advertising and Web Site Injury Liability insurance included in the “underlying insurance” of policies listed in the Schedule of Underlying Insurance on the policy to which this endorsement is attached.

- 1
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8. "Web site injury" has the same meaning as de-fined in any Personal, Advertising and Web Site Injury Liability insurance included in the "underlying insurance" of policies listed in the Schedule of Underlying Insurance on the policy to which this endorsement is attached.

6 UM 03 55 08 00

7 4.19 The Excess Policies contain the following provisions with regard to an

8 insured's duties in event of a loss:

9 **SECTION IV – CONDITIONS**

10 [...]

11 **5. DUTIES IN THE EVENT OF OCCURRENCE OR OFFENSE, CLAIM OR SUIT.**

- 12 a. You must see to it that we are notified promptly of an
- 13 "occurrence" or an "offense" which may result in a claim under this insurance. Notice should include:

- 14 (1) How, when and where the "occurrence" or "offense"
- 15 took place; and
- 16 (2) The names and addresses of any injured persons and witnesses.

- 17 b. If a claim is made or "suit" is brought against any
- 18 insured which may result in a claim against this insurance, you must see to it that we receive
- 19 prompt written notice of the claim or "suit".

- 20 c. The insured must:

- 21 (1) Cooperate with the "underlying insurers";
- 22
- 23 (2) Comply with the terms of the "underlying insurance"; and

(3) Pursue all rights of contribution or indemnity against any person or organization who may be liable to the insured because of "bodily injury", "property damage", "personal injury" or "advertising injury" with respect to which insurance is provided under this or any policy of "underlying insurance".

d. When we believe that a claim may exceed the "underlying insurance", we may join with the insured and the "underlying insurer" in the investigation, settlement and defense of all claims and "suits" in connection with such "occurrence" or "offense". In such event, the insured must cooperate with us.

UM 00 01 11 03

The 11-12 Excess Policy, 12-13 Excess Policy, 13-14 Excess Policy, and 14-14 Excess Policy contain the following modifying endorsement:

CRISIS MANAGEMENT SERVICES EXPENSES

This endorsement modifies insurance provided under the following:

**COMMERCIAL EXCESS LIABILITY (UMBRELLA)
INSURANCE**

PROVISIONS

[...]

4. The following is added to Paragraph 5., DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT., in SECTION IV CONDITIONS.:

In addition to reporting a "crisis management event" to us by telephone within 24 hours after the "crisis management

1 event" first commences, you must also provide written
2 notice of such "crisis management event" to us as soon as
3 practicable. Reporting and notice should include:

- 4 a. How, when and where the "crisis management event"
5 took place;
- 6 b. The names and addresses of any injured persons and
7 witnesses;
- 8 c. The nature and location of any "bodily injury",
9 "property damage", "personal injury" or "advertising
10 injury" caused by the "occurrence" or "offense" out of
11 which the "crisis management event" arises; and
- 12 d. How the "crisis management event" has resulted, or
13 may result, in damages, in excess of the "applicable
14 underlying limit", because of "bodily injury", "property
15 damage", "personal injury" or "advertising injury" to
16 which this insurance applies and has resulted, or may
17 result, in significant adverse regional or national media
18 coverage.

19 If we determine that the crisis no longer exists and we have
20 notified you of such determination, you must submit to us
21 all "crisis management services expenses" within 180 days
22 after the date of such notice. Expenses submitted after
23 such 180-day period are not reimbursable.

UM 06 03 11 10

24 Additionally, the 13-14 Excess Policy and 14-14 Excess Policy contain the
25 following modifying endorsement:

**THIS ENDORSEMENT CHANGES THE POLICY.
PLEASE READ IT CAREFULLY**

AMENDMENT OF DUTIES IN THE EVENT OF

1 **OCCURRENCE OR OFFENSE, CLAIM OR SUIT**
2 **AND REPRESENTATION CONDITIONS**

3 This endorsement modifies insurance provided under the
4 following:

5 **COMMERCIAL EXCESS LIABILITY (UMBRELLA)**
6 **INSURANCE**

7 **PROVISIONS**

8 **1. KNOWLEDGE AND NOTICE OF**
9 **OCCURRENCE OR OFFENSE**

10 The following is added to Paragraph 5., **DUTIES IN**
11 **THE EVENT OF OCCURRENCE OR OFFENSE,**
12 **CLAIM OR SUIT., of SECTION IV —**
13 **CONDITIONS.:**

14 e. The following provisions apply to Paragraph a.
15 above, but only for the purposes of the insurance
16 provided under this policy to you or any insured
17 listed in Paragraph 1. or 2. a., b., d. or e. of
18 **SECTION II — WHO IS AN INSURED.:**

19 (1) Notice to us of such "occurrence" or "offense"
20 must be given as soon as practicable only after the
21 "occurrence" or "offense" is known to you (if you
22 are an individual), any of your partners or
23 members who is an individual (if you are a
 partnership or joint venture), any of your
 managers who is an individual (if you are a
 limited liability company), any of your trustees
 who is an individual (if you are a trust), any of
 your executive officers or directors (if you are an
 organization other than a partnership, joint
 venture, limited liability company or trust) or any
 employee authorized by you to give notice of an
 "occurrence" or "offense".

1
2 (2) If you are a partnership, joint venture, limited
3 liability company or trust, and none of your
4 partners, joint venture members, managers or
5 trustees are individuals, notice to us of such
6 "occurrence" or "offense" must be given as soon
7 as practicable only after the "occurrence" or
8 "offense" is known by:

9 (a) Any individual who is:

10 (i) A partner or member of any partnership
11 or joint venture;

12 (ii) A manager of any limited liability
13 company;

14 (iii) A trustee of any trust; or

15 (iv) An executive officer or director of any
16 other organization;

17 that is your partner, joint venture member,
18 manager or trustee; or

19 (b) Any employee authorized by such
20 partnership, joint venture, limited liability
21 company, trust or other organization to give
22 notice of an "occurrence" or "offense".

23 (3) Notice to us of such "occurrence" or "offense"
will be deemed to be given as soon as practicable
if it is given in good faith as soon as practicable
to your workers' compensation insurer. This
applies only if you subsequently give notice to us
of the "occurrence" or "offense" as soon as
practicable after any of the persons described in
Paragraphs e. (1) or (2) above discovers that the
"occurrence" or "offense" may result in sums to

1 which the insurance provided under this policy
2 may apply.

3 However, if this policy includes an endorsement that
4 provides limited coverage for "bodily injury" or
5 "property damage" or pollution costs arising out of a
6 discharge, release or escape of "pollutants" which
7 contains a requirement that the discharge, release or
8 escape of "pollutants" must be reported to us within
a specific number of days after its abrupt
commencement, this Paragraph e. does not affect
that requirement.

9 UM 04 77 07 08

10 4.20 The Excess Policies also contain the following relevant definitions:

11 **3. "Applicable underlying limit" means:**

12 **a.** If the policies of "underlying insurance" apply to
13 the "occurrence" or "offense", the greater of:

14 (1) The amount of insurance stated in the policies
15 of "underlying insurance" in the Declarations
16 or any other available insurance less the
17 amount by which any aggregate limit so stated
has been reduced solely due of payment of
claims; or

18 (2) The "retained limit" shown in the Declarations;
19 or

20 **b.** If the policies of "underlying insurance" do not
21 apply to the "occurrence" or "offense", the amount
stated in the Declarations as the "retained limit".

22 The limits of insurance in any policy of "underlying
23 insurance" will apply even if:

1 (i) The “underlying insurer” claims the insured
2 failed to comply with any condition of the
3 policy; or

4 (ii) The “underlying insurer” becomes bankrupt
5 or insolvent.

6 [...]

7 8. “Occurrence” means an accident, including continuous
8 or repeated exposure to substantially the same general
9 harmful conditions.

10 9. “Offense” means any of the offenses listed in the
11 definition of “personal injury” or “advertising injury”.

12 2. “Applicable limit of insurance” means the maximum
13 amount we will pay as damages in accordance with
14 **SECTION III – LIMITS OF INSURANCE.**

15 [...]

16 13. “Property damage” means:

17 a. Physical injury to tangible property, including all
18 resulting loss of use of that property. All such loss
19 of use shall be deemed to occur at the time of the
20 physical injury that caused it; or

21 b. Loss of use of tangible property that is not
22 physically injured. All such loss of use shall be
23 deemed to occur at the time of the “occurrence”
that caused it.

[...]

18 14. “Retained limit” is the sum stated in the Declarations
19 as such. If the policies of “underlying insurance” do not
20 apply to the “occurrence” or “offense”, the insured
21 shall retain this amount as self insurance with respect
22 to:

23 a. “Bodily injury” or “property damage” caused by
each “occurrence”; or

b. “Personal injury” or “advertising injury” sustained

1 by any one person or organization and caused by an
2 “offense”.

3 **15.** “Suit” means a civil proceeding in which damages
4 because of “bodily injury”, “property damage”,
5 “personal injury” or “advertising injury” to which this
6 insurance applies are alleged. “Suit” includes:

- 7 **a.** An arbitration proceeding alleging such damages to
8 which the insured must submit or does submit with
9 our consent; or
- 10 **b.** Any other alternative dispute resolution proceeding
11 in which such damages are claimed and to which the
12 insured submits with our consent.

13 **16.** “Ultimate net loss” means the sum actually paid or
14 payable due to a claim for which the insured is liable
15 either by a settlement to which we agreed or a final
16 judgment. Such sum will include proper adjustments
17 for recoveries and salvage.

18 **17.** “Underlying insurance” means the policies listed in the
19 Schedule of Underlying Insurance and includes:

- 20 **a.** Any renewal or replacement of such policies; and
- 21 **b.** Any other insurance available to the insured.

22 **18.** “Underlying insurer” means any insurer which
23 provides a policy listed in the Schedule of Underlying
Insurance or any other insurance available to the
insured.

UM 00 01 11 03 as amended by UM 04 04 11 03

The 09-10 Excess Policy, 10-11 Excess Policy, and 11-12 Excess Policy
contain the following definition of “advertising injury” and “personal injury”:

1 **1.** “Advertising injury” means injury arising out of one or
2 more of the following “offenses”:

3 **a.** Oral, written or electronic publication of material that
4 slanders or libels a person or organization or
5 disparages a person’s or organization’s goods,
6 products or services, provided that claim is made or
7 “suit” is brought by a person or organization that
8 claims to have been slandered or libeled, or whose
9 goods, products or services have allegedly been
10 disparaged;

11 [...]

12 Such “offenses” must be committed in the course of
13 advertising your goods or products.

14 [...]

15 **10.** "Personal injury" means injury, other than "bodily
16 injury", arising out of one or more of the following
17 offenses:

18 [...]

19 **c.** The wrongful eviction from, wrongful entry into, or
20 invasion of the right of private occupancy of a room,
21 dwelling or premises that a person occupies by or
22 on behalf of its owner, landlord or lessor, provided
23 that the wrongful eviction, wrongful entry or
invasion of the right of private occupancy is
performed by or on behalf of the owner, landlord or
lessor of that room, dwelling or premises;

d. Oral, written or electronic publication of material
that slanders or libels a person or organization or
disparages a person's or organization's goods,
products or services, provided that claim is made or
"suit" is brought by a person or organization that
claims to have been slandered or libeled, or whose
goods, products or services have allegedly been
disparaged; or

 [...]

 Such "offenses" must arise out of the conduct of your
business, excluding advertising, publishing, broadcasting

1 or telecasting done by or for you.

2 UM 00 01 11 03

3 The 12-13 Excess Policy, 13-14 Excess policy, and 14-14 Excess Policy
4 contain the following definitions of “advertising injury” and “personal injury”:
5

6 “Advertising Injury”:

7 **a.** Means injury, other than “personal injury”, caused by
8 one or more of the following offenses:

9 (1) Oral or written publication, including publication by
10 electronic means, of material in your
11 “advertisement” that slanders or libels a person or
12 organization or disparages a person’s or
13 organization’s goods, products or services,
14 provided that the claim is made or “suit” is brought
15 by a person or organization that claims to have been
16 slandered or libeled, or that claims to have had its
17 goods, products or services disparaged;

18 [...]

19 **b.** Includes “bodily injury” caused by one or more of the
20 offenses described in Paragraph **a.** above.

21 [...]

22 “Personal injury”:

23 **a.** Means injury, other than “advertising injury”, caused by
one or more of the following offenses arising out of your
business:

(1) False arrest, detention or imprisonment;

(2) Malicious prosecution;

(3) The wrongful eviction from, wrongful entry into, or
invasion of the right of private occupancy of a room,
dwelling or premises that a person occupies, provided

1 that the wrongful eviction, wrongful entry, or
2 invasion of the right of private occupancy is
3 committed by or on behalf of the owner, landlord or
less or of that room, dwelling or premises;

4 (4) Oral or written publication, including publication by
5 electronic means, of material that slanders or libels a
6 person or organization or disparages a person's or
7 organization's goods, products or services, provided
8 that the claim is made or "suit" is brought by a person
or organization that claims to have been slandered or
libeled, or that claims to have had its goods, products
or services disparaged; or

9 [...]

10 **b.** Includes "bodily injury" caused by one or more of the
11 offenses described in Paragraph **a.** above.

12 [...]

13 "Advertisement" means a notice that is broadcast or
14 published to the general public or specific market
segments about your goods, products or services for the
purpose of attracting customers or supporters. For the
purposes of this definition:

15 **a.** Notices that are published include material placed
16 on the internet or on similar electronic means of
communication; and

17 **b.** Regarding websites, only that part of a website that
18 is about your goods, products or services for the
19 purposes of attracting customers or supporters is
considered an advertisement.

20 UM 05 11 02 09

21 The 11-12 Excess Policy, 12-13 Excess Policy, 13-14 Excess Policy, and
22 14-14 Excess Policy contain the following relevant definitions:
23

1 "Crisis management event" means an event arising out of
2 an "occurrence" or an "offense" that any of your
3 "designated executive officers" reasonably determines has
resulted, or may result, in:

4 **a.** Damages, in excess of the "applicable underlying limit",
5 because of "bodily injury", "property damage",
6 "personal injury" or "advertising injury" to which this
insurance applies; and

7 **b.** Significant adverse regional or national media coverage
8 about you.

9 "Crisis management service expenses" means the
10 reasonable and necessary expenses you incur, after a
11 "crisis management event" first commences and before
such event ends, to:

12 **a.** Retain a public relations or crisis management
consultant or firm; or

13 **b.** Plan or implement your public relations campaign; to
14 mitigate the negative publicity generated from a "crisis
15 management event".

16 A "crisis management event" will be deemed to end when
17 we determine that the crisis no longer exists, or when the
Crisis Management Service Expenses Limit has been
18 exhausted, whichever is earlier.

19 "Designated executive officer" means:

20 **a.** Chief Executive Officer;

21 **b.** Chief Operating Officer;

22 **c.** Chief Financial Officer;

23 **d.** President;

e. General Counsel;

f. Any person acting in the same capacity as any position listed in Paragraph a. through e. above;

g. Any of your lawfully elected or appointed officials, executive officers, directors, trustees or commissioners, or your risk manager or any leader of your risk management or other department that is responsible for insurance matters, if you are a public entity or a college or school; or

UM 06 03 11 10

E. The 98-00 Commercial General Liability Policies

4.21 Travelers also issued multiple commercial general liability policies to CAG, CRM, and LSL which were in effect from April 26, 1998 through April 26, 2000. The policy numbers and policy periods are set forth below:

Policy Number	Insuring Entity	Policy Period	Hereinafter Referred to As:
1MP301443230	FGIC	04/26/98 to 04/26/99	FGIC Policy
KK08400088	St. Paul	04/26/99 to 04/26/00	St. Paul Policy

These Policies are hereinafter referred to as the “98-00 Policies”.

4.22 The FGIC Policy provided commercial primary general liability coverage with an each occurrence limit of \$1,000,000 and general and products/completed operations aggregate limits of \$2,000,000. The primary coverage was provided pursuant to the terms and conditions of form CG 00 01 (01 96 ed.). Form CG 00 01 (01 96 ed.) contains an insuring agreement and exclusions

1 similar in material respects to the 09-14 Policies. See IV. B., above.

2 4.23 The FGIC Policy also provided commercial umbrella liability
3 coverage, with a \$2,000,000 each incident limit and \$2,000,000 general aggregate
4 and products/completed operations aggregate limits. The umbrella liability
5 coverage was afforded pursuant to the terms and conditions of form CL/UL 00 01
6 (02 93 ed.).
7

8 4.24 The St. Paul Policy provided Contractors Commercial General
9 Liability Protection pursuant to form 47175 (04-91 ed), which provided a
10 \$1,000,000 each event limit, and a \$2,000,000 general total limit. Form 47175 (04-
11 91 ed) contains an insuring agreement and exclusions similar in material respects
12 to the above-cited 09-14 Policies. See IV. B., above.
13

14 4.25 Travelers reserves the right to assert any other language from the 98-
15 00 Policies, 09-14 Policies, or the Excess Policies that may be potentially applicable
16 to this matter.

17 4.26 In accordance with applicable Washington law, Travelers now brings
18 this claim for Declaratory Judgment seeking a judicial determination that they do
19 not owe any defense or indemnity obligations to CAG, CRM, LSL, or the Sali
20 Defendants for some or all of the claims asserted against them in the Underlying
21 Arbitration.
22

23 **V. NO COVERAGE IS AVAILABLE TO CAG, CRM, AND LSL**

UNDER THE 09-14 POLICIES

5.1 Travelers reasserts paragraphs 1.1 through 4.26 and incorporates the same as though fully stated herein.

5.2 The 09-14 Policies provide that individuals who are members or managers of limited liability companies and individuals who are “executive officers”, directors, and stockholders of organizations may qualify as Insureds with respect to their duties as members, managers “executive officers”, directors, and/or stockholders.

5.3 There is an actual and justiciable controversy as to whether the Sali Defendants qualify as Insureds under the 09-14 Policies based on their status and duties as members, managers “executive officers”, directors, and/or stockholders of CAG, CRM, and/or LSL.

5.4 Under Coverage A, the 09-14 Policies provide coverage for damages because of “property damage” caused by an “occurrence”, as those terms are defined, provided that any such “ “property damage” occurs during the policy period and the insured did not know, in whole or in part, about the alleged “property damage” prior to the inception of any applicable policy period.

5.5 There is an actual and justiciable controversy as to whether the claims against CAG, CRM, LSL, and the Sali Defendants involve claims for “property damage”, as that term is defined.

1 5.6 There is an actual and justiciable controversy as to whether the claims
2 against CAG, CRM, LSL, and the Sali Defendants involve an “occurrence”, as that
3 term is defined.

4 5.7 There is an actual and justiciable controversy as to whether the claims
5 against CAG, CRM, LSL, and the Sali Defendants involve “property damage” that
6 occurred during any of the applicable policy periods.

7 5.8 There is an actual and justiciable controversy as to whether the claims
8 against CAG, CRM, LSL, and the Sali Defendants had knowledge, in whole or in
9 part, of any alleged “property damage” prior to the inception of one or more of the
10 09-14 Policies’ policy periods.

11 5.9 Under Coverage A, the 09-14 Policies exclude coverage for “property
12 damage” expected or intended from the standpoint of the insured.

13 5.10 There is an actual and justiciable controversy as to whether CAG,
14 CRM, LSL, or the Sali Defendants expected or intended any alleged "property
15 damage".

16 5.11 The 09-14 Policies exclude coverage for contractual liability, as
17 described in exclusions 2.b. (Coverage A) and 2.e. (Coverage B), above. See ¶ 4.5
18 and ¶ 4.7.

19 5.12 There is an actual and justiciable controversy as to whether coverage
20 for CAG, CRM, LSL, and the Sali Defendants is precluded by the exclusions for
21
22
23

1 contractual liability, as described in exclusions 2.b. (Coverage A) and 2.e.
2 (Coverage B), above. See ¶ 4.5 and ¶ 4.7.

3 5.13 Under Coverage A, the 09-14 Policies exclude coverage for “property
4 damage” to property as described in exclusion 2.j., above. See, ¶ 4.5.
5

6 5.14 There is an actual and justiciable controversy as to whether coverage
7 for CAG, CRM, LSL, and the Sali Defendants is precluded by the damage to
8 property exclusions described in exclusion 2.j., above. See, ¶ 4.5.

9 5.15 Under Coverage A, the 09-14 Policies exclude coverage for “property
10 damage” to impaired property or property that has not been physical injured as
11 described in exclusion 2.m., above.
12

13 5.16 There is an actual and justiciable controversy as to whether coverage
14 for CAG, CRM, LSL, and the Sali Defendants is precluded by the exclusion for
15 impaired property or property that has not been physical injured as described in
16 exclusion 2.m., above.

17 5.17 Under Coverage A, the 09-14 Policies exclude coverage for the recall
18 of products, work, or impaired property as described in exclusion 2.n., above.
19

20 5.18 There is an actual and justiciable controversy as to whether coverage
21 for CAG, CRM, LSL, and the Sali Defendants is precluded by the exclusion for the
22 recall of products, work, or impaired property as described in exclusion 2.n., above.

23 5.19 Under Coverage B, the 09-14 Policies provide coverage for damages

1 for “personal injury” and “advertising injury”. The 09-10 Policy, 10-11 Policy, and
2 11-12 Policy also include coverage for damages because of “web site injury”. For
3 coverage to apply, the personal injury, advertising injury, or web site injury must
4 be caused by an offense committed during the 09-14 Policies’ policy periods.
5

6 5.20 There is an actual and justiciable controversy as to whether coverage
7 for CAG, CRM, LSL, and the Sali Defendants are obligated to pay damages because
8 of “personal injury”, as that term is defined.

9 5.21 There is an actual and justiciable controversy as to whether coverage
10 for CAG, CRM, LSL, and the Sali Defendants are obligated to pay damages because
11 of “advertising injury”, as that term is defined.
12

13 5.22 There is an actual and justiciable controversy as to whether coverage
14 for CAG, CRM, LSL, and the Sali Defendants are obligated to pay damages because
15 of “web site injury”, as that term is defined.

16 5.23 There is an actual and justiciable controversy as to whether CAG,
17 CRM, LSL, and the Sali Defendants’ alleged liability for personal injury,
18 advertising injury, and web site injury was caused by an offense committed during
19 the 09-14 Policies’ policy periods.
20

21 5.24 Under Coverage B, the 09-14 Policies exclude coverage for the
22 knowing violation of rights of another as described in exclusion 2.a., above. See, ¶
23 4.7.

1 5.25 There is an actual and justiciable controversy as to whether coverage
2 for CAG, CRM, LSL, and the Sali Defendants is precluded by the exclusion for
3 knowing violation of rights of another as described in exclusion 2.a., above.

4 5.26 Under Coverage B, the 09-14 Policies exclude coverage for material
5 published with knowledge of falsity, as described in exclusion 2.b., above.
6

7 5.27 There is an actual and justiciable controversy as to whether coverage
8 for CAG, CRM, LSL, and the Sali Defendants is precluded by the exclusion for
9 material published with knowledge of falsity, as described in exclusion 2.b., above.

10 5.28 Under Coverage B, the 09-14 Policies exclude coverage for breach of
11 contract, as described in exclusion 2.f., above.
12

13 5.29 There is an actual and justiciable controversy as to whether coverage
14 for CAG, CRM, LSL, and the Sali Defendants is precluded by the exclusion for
15 breach of contract, as described in exclusion 2.f., above.

16 5.30 Under Coverage B, the 09-10 Policy, 10-11 Policy, and 11-12 Policy
17 exclude coverage for dishonest, fraudulent or malicious acts, as described in
18 exclusion 2.n., above.
19

20 5.31 There is an actual and justiciable controversy as to whether coverage
21 for CAG, CRM, LSL, and the Sali Defendants is precluded by the exclusion for
22 dishonest, fraudulent or malicious acts, as described in exclusion 2.n., above.

23 5.32 The 09-14 Policies contain duties that must be fulfilled by insureds as

1 a condition of coverage.

2 5.33 There is an actual and justiciable controversy as to whether CAG,
3 CRM, LSL, and the Sali Defendants have complied with their duties as insureds.

4 5.34 Under the 14-14 Policy, if TIC initially provides a defense or pays for
5 a defense but later determines that none of the claims for which TIC provided a
6 defense or defense costs are covered under the 14-14 Policy, TIC has the right to
7 reimbursement for the defense costs it has incurred.

8 5.35 There is an actual and justiciable controversy as to whether TIC is
9 entitled to reimbursement of amounts paid to defend CAG, CRM, LSL, and the Sali
10 Defendants in the Underlying Arbitration.
11

12 5.36 Travelers reserves the right to assert any other exclusions or grounds
13 for which coverage for the claims against CAG, CRM, LSL, and the Sali
14 Defendants may be excluded under the 09-14 Policies and the 98-00 Policies.
15

16 **VI. NO COVERAGE IS AVAILABLE TO CAG, CRM, AND LSL**
17 **UNDER THE EXCESS POLICIES**

18 6.1 Travelers reasserts paragraphs 1.1 through 5.36 and incorporates the
19 same as though fully stated herein.

20 6.2 The Excess Policies contain insuring agreements and exclusionary
21 provisions which are the same or substantively similar to provisions contained in
22 the 09-14 Policies. There are actual and justiciable controversies with regard to the
23

1 application of those provisions to the claims asserted in the Underlying Arbitration
2 for the reasons set forth above in Section V.

3 6.3 The Excess Policies only provide coverage, if at all, for liability in
4 excess of any other collectible insurance available to an insured.
5

6 6.4 There is an actual and justiciable controversy as to whether any
7 covered liability exceeds other collectible insurance available to CAG, CRM, LSL,
8 and the Sali Defendants.

9 6.5 The 11-12 Excess Policy, 12-13 Excess Policy, 13-14 Excess Policy,
10 and 14-14 Excess Policy provide coverage for “crisis management service
11 expenses” incurred for a “crisis management event”, as those terms are defined,
12 that first commences during the subject policy period.
13

14 6.6 There is an actual and justiciable controversy as to whether CAG,
15 CRM, LSL, and the Sali Defendants have incurred any “crisis management service
16 expenses” for a “crisis management event”, as those terms are defined.
17

18 6.7 There is an actual and justiciable controversy as to whether a “crisis
19 management event”, as that term is defined, first commenced during the 11-12
20 Excess Policy, 12-13 Excess Policy, 13-14 Excess Policy, and 14-14 Excess
21 Policy’s policy periods.

22 6.8 The 09-10 Excess Policy, 10-11 Excess Policy, and 11-12 Excess
23 Policy exclude coverage for property damage to real and/or personal property, as

described in form UM 00 30 01 86, above. See, ¶ 4.18.

6.9 There is an actual and justiciable controversy as to whether coverage for CAG, CRM, LSL, and the Sali Defendants is precluded by the exclusion for property damage to real and/or personal property, as described in form UM 00 30 01 86, above. See, ¶ 4.18.

6.10 Travelers reserves the right to assert any other exclusions or grounds for which coverage for the claims against CAG, CRM, LSL, and the Sali Defendants may be excluded under the Excess Policies.

VII. NO COVERAGE IS AVAILABLE TO CAG, CRM, AND LSL UNDER THE 98-00 POLICIES

7.1 Travelers reasserts paragraphs 1.1 through 6.10 and incorporates the same as though fully stated herein.

7.2 The 98-00 Policies contain insuring agreements and exclusionary provisions which are substantively similar to provisions contained in the 09-14 Policies.

7.3 There are actual and justiciable controversies as to the application of those provisions and whether any coverage is available to CAG, CRM, LSL, and the Sali Defendants under the 98-00 Policies with regard to the claims asserted in the Underlying Arbitration for the reasons set forth above in Section V.

7.4 Travelers reserves the right to assert any other exclusions or grounds

1 for which coverage for the claims against CAG, CRM, LSL, and the Sali
2 Defendants may be excluded under the 98-00 Policies.

3 **VIII. CAUSE OF ACTION FOR DECLARATORY RELIEF**

4 8.1 Travelers reasserts paragraphs 1.1 through 7.4 and incorporates the
5 same as though fully stated herein.

6 8.2 Actual and justiciable controversies exist as to whether any defense
7 obligations are owed to CAG, CRM, LSL, and the Sali Defendants under the 98-00
8 Policies, the 09-14 Policies, and the Excess Policies in regard to the claims asserted
9 against CAG, CRM, LSL, and the Sali Defendants in the Underlying Arbitration.
10

11 8.3 Pursuant to and in accordance with 28 U.S.C. § 2201, Travelers
12 requests that the Court grant declaratory relief in favor of Travelers and enter a
13 judicial determination that Travelers does not have an obligation to defend CAG,
14 CRM, LSL, and the Sali Defendants in regard to the claims asserted against CAG,
15 CRM, LSL, and the Sali Defendants in the Underlying Arbitration under the 98-00
16 Policies, the 09-14 Policies, and the Excess Policies.
17

18 8.4 Actual and justiciable controversies exist as to whether any indemnity
19 coverage is available to CAG, CRM, LSL, and the Sali Defendants under the 98-00
20 Policies, the 09-14 Policies, and the Excess Policies in regard to the claims asserted
21 against CAG, CRM, LSL, and the Sali Defendants in the Underlying Arbitration.
22

23 8.5 Pursuant to and in accordance with 28 U.S.C. § 2201, Travelers

1 requests that the Court grant declaratory relief in favor of Travelers and enter a
2 judicial determination that Travelers does not have an obligation to provide any
3 indemnity coverage to CAG, CRM, LSL, and the Sali Defendants in regard to the
4 claims asserted against CAG, CRM, LSL, and the Sali Defendants in the Underlying
5 Arbitration under the 98-00 Policies, the 09-14 Policies, and the Excess Policies.
6

7 **IX. PRAYER FOR RELIEF**

8 WHEREFORE, Travelers, having alleged the foregoing, now prays for the
9 following relief:

10 1. For a declaration of the rights and obligations of the parties hereto
11 under the 98-00 Policies, the 09-14 Policies, and the Excess Policies.
12

13 2. For a declaration that Travelers has no duty to defend CAG, CRM,
14 LSL, and the Sali Defendants under the 98-00 Policies, the 09-14 Policies, and the
15 Excess Policies.

16 3. For a declaration that Travelers has no duty to indemnify CAG, CRM,
17 LSL, and the Sali Defendants under the 98-00 Policies, 09-14 Policies, and the
18 Excess Policies.
19

20 4. For a judicial declaration that the Interstate is bound by any judicial
21 declarations in this matter involving the 98-00 Policies, 09-14 Policies, and the
22 Excess Policies.

23 5. To the extent allowed by applicable law, for reimbursement of any and

1 all defense costs, fees, or expenses incurred by TIC in defending CAG, CRM, LSL,
2 and the Sali Defendants in the Underlying Arbitration under the 14-14 Policy for
3 which TIC has no defense obligation.

4 6. For all pre-judgment and post-judgment interest as allowed by
5 applicable law.
6

7 7. For attorney fees, interest and costs allowed by applicable law.

8 8. For other and further relief as the Court deems just and equitable.

9 Dated this 13th day of July, 2021.
10

11 LETHER LAW GROUP

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13 /s/ Eric Neal

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